

H 11374

CONGRESSIONAL RECORD—HOUSE

December 1, 1980

cilities to make available a copy of the information, rather than the original. This gives facilities concerned with the integrity of their medical records the flexibility of providing the patient with the original or with a copy of the document, at their option.

We added a requirement that, in the case of disclosures of medical information for purposes of health research, the person conducting the research project must notify the chief medical officer of the State at least 7 days before the medical care facility holding the records sought actually makes the records available. This 1-week notice will give the State official an opportunity to take whatever additional steps might be authorized under State law to protect the privacy of the medical information sought in connection with the proposed research.

We specified that, if a medical care facility discloses medical information about a patient without a patient's consent to a health researcher, a public health investigator, an auditor, or for health and safety purposes, the facility is required to maintain an accounting of the disclosure and to make the accounting available to the patient on request. The purpose of this accounting requirement, which will apply whenever information is recorded or removed, is to give patients the ability to determine to whom, and for what reasons their medical records were disclosed.

In fashioning these and numerous other amendments to the Government Operations Committee bill, our subcommittee and full committee sought to balance the patient's interest in confidentiality against society's legitimate needs for limited access to patient medical information. I believe that we have succeeded in striking a reasonable, workable balance within a framework that does not unduly burden medical care facilities or their patients.

Mr. Speaker, I would like to conclude my remarks by expressing my deep personal admiration for the contributions that my distinguished colleague, Mr. RICHARDSON PREYER, has made to the work of our subcommittee, the full committee, and the House. During the 6 years that I have had the privilege of serving with Judge PREYER on the subcommittee, he has consistently displayed the qualities to which all Members of this Chamber, regardless of partisan affiliation or ideological viewpoint, aspire—fairness, integrity, sound judgment, the courage to take on difficult issues, and great dignity, whether in victory or in defeat.

As the business of governing becomes ever more difficult, the house will need men and women of Judge PREYER's caliber if it is to fulfill its institutional responsibilities in this society. I greatly regret the departure of this eminent legislator, a man who so ably fulfilled the mission defined by his alma mater: "In the Nation's service." ●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. PREYER) that the House suspend the rules and pass the bill, H.R. 5935, as amended.

The question was taken.

Mr. ERLENBORN. Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

APPOINTMENT OF CONFEREES ON S. 2363, GEORGIA O'KEEFE NATIONAL HISTORIC SITE

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2363) to authorize the establishment of the Georgia O'Keeffe National Historic Site, and for other purposes, with a House amendment thereto, and agree to the conference asked by the Senate.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona? The Chair hears none and, without objection, appoints the following conferees: Messrs. UDALL, PHILLIP BURTON, KASTENMEIER, FLORIO, SEBELIUS, and LAGOMARSINO.

There was no objection.

PAPERWORK REDUCTION ACT OF 1980

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 6410) to reduce paperwork and enhance the economy and efficiency of the Government and the private sector by improving Federal information policymaking, and for other purposes.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause, and insert:

That this Act may be cited as the "Paperwork Reduction Act of 1980".

Sec. 2. (a) Chapter 35 of title 44, United States Code, is amended to read as follows:

"CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

"Sec.

"3501. Purpose.

"3502. Definitions.

"3503. Office of Information and Regulatory Affairs.

"3504. Authority and functions of Director.

"3505. Assignment of tasks and deadlines.

"3506. Federal agency responsibilities.

"3507. Public information collection activities—submission to Director; approval and delegation.

"3508. Determination of necessity for information; hearing.

"3509. Designation of central collection agency.

"3510. Cooperation of agencies in making information available.

"3511. Establishment and operation of Federal Information Locator System.

"3512. Public protection.

"3513. Director review of agency activities; reporting; agency response.

"3514. Responsiveness to Congress.

"3515. Administrative powers.

"3516. Rules and regulations.

"3517. Consultation with other agencies and the public.

"3518. Effect on existing laws and regulations.

"3519. Access to information.

"3520. Authorization of appropriations.

"§ 3501. Purpose

"The purpose of this chapter is—

"(1) to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons;

"(2) to minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information;

"(3) to maximize the usefulness of information collected by the Federal Government;

"(4) to coordinate, integrate and, to the extent practicable and appropriate, make uniform Federal information policies and practices;

"(5) to ensure that automatic data processing and telecommunications technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, reduces waste and fraud, and, wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to the Federal Government; and

"(6) to ensure that the collection, maintenance, use and dissemination of information by the Federal Government is consistent with applicable laws relating to confidentiality, including section 552a of title 5, United States Code, known as the Privacy Act.

"§ 3502. Definitions

"As used in this chapter—

"(1) the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include the General Accounting Office, Federal Election Commission, the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or Government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities;

"(2) the terms 'automatic data processing,' 'automatic data processing equipment,' and 'telecommunications' do not include any data processing or telecommunications system or equipment, the function, operation or use of which—

"(A) involves intelligence activities;

"(B) involves cryptologic activities related to national security;

"(C) involves the direct command and control of military forces;

"(D) involves equipment which is an integral part of a weapon or weapons system; or

"(E) is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include automatic data processing or telecommunications equipment used for routine administrative and business applications such as payroll finance, logistics, and personnel management;

"(3) the term 'burden' means the time, effort, or financial resources expended by persons to provide information to a Federal agency;

"(4) the term 'collection of information' means the obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods calling for either—

"(A) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(B) answers to questions posed to agencies, instrumentalities, or employees of the

December 1, 1980

CONGRESSIONAL RECORD—HOUSE

H 11373

In recent hearings before the House Health Subcommittee, on which I serve as ranking member, we learned that the tragedy of medical disclosures is deeper than many realize. Several doctors testified that they are reluctant to make records if their sacred Hippocratic Oath may be violated by the act of recording. Patients testified that they are hesitant to freely speak with their doctor when their ailments may later be open to the scrutiny of Federal agents. The very purpose of records is jeopardized by a lack of complete privacy.

This is not a minor problem. The 1977 National Bureau of Standards study on medical records privacy concluded that—

Overall the main finding . . . is that identified patient information from medical records now flows regularly out of the primary care setting in ways that allow patients few controls over these disclosures.

In 1974 Congress underscored its concern for the confidentiality of personal records by passing the Privacy Act. A loophole in that act, however, has allowed some government agencies to retain their authority to inspect medical records. In fact, a private patient whose treatment is not covered by a Federal assistance program may even have his record inspected to formulate standards or norms for patients receiving Federal assistance. Section 2(b)(1) is the Privacy Act's most abused loophole:

The purpose of this Act is to provide certain safeguard against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to permit an individual to determine what records pertaining to him are collected.

The language "except as otherwise provided by law" has provided many agencies with the opportunity they needed to continue to scrutinize private records. Perhaps we can get an idea of the potential for medical records abuse this loophole made possible by examining a provision of the Social Security Act, section 1156(a):

Each Professional Standards Review Organization shall apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice in its regions.

These governing norms for professional standards review organizations (PSRO's) are not to simply spring into existence; the Social Security Act empowers each PSRO to "collect such data relevant to its function and such information and keep and maintain such records in such form as the Secretary may require." (Section 1155(f)(1)(B) of the Social Security Act.) To make clear the breadth of this Federal agency's power to invade the privacy of medical records, I will quote one further provision from the Social Security Act:

Section 1155(b)(3): PSRO's may "examine the pertinent records of any practitioner or provider of health care services."

The Social Security Act, therefore, is a classic example of how a law may grant federal agencies unwarranted authority to enter physicians' offices and inspect the private records of all patients. Moreover, the Privacy Act does not reduce the threat in the slightest.

Perhaps you can understand, Mr. Speaker, why I felt it essential to amend H.R. 5935 when it was considered by the Ways and Means Committee. My amendments to H.R. 5935 are a step toward closing the dangerous loophole in the Privacy Act. I regret, however, that this bill is considered today under a suspension of the House rules. This will make it impossible for me to offer many other amendments to protect the confidentiality of medical records completely.

My amendment, which will be a portion of H.R. 5935, relates directly to the problem I mentioned earlier—PSRO's and other Government auditors using their unlimited authority to pry into all medical records. My amendment prohibits PSRO's and other Government auditors under section 126 of the bill from examining the records of any patient whose medical care is not provided under a Federal assistance program. In other words, PSRO's and other auditors will need to receive permission from any private patient before inspecting his records to develop norms or for any other purpose.

This will place some limitations on the present power of PSRO's to examine "the records of any practitioner." At least those who are not receiving Federal Government assistance will be protected against the intrusion of Federal clerks.

Unfortunately this will not solve all major problems. At the outset of my address, I mentioned the New York State abortion research incident. Considering this bill under a suspension of the rules will prohibit me from offering an amendment to prevent this from happening again. The health research section of H.R. 5935, section 124, will continue to allow such research to be done as long as the research effort is approved by an "institutional review board." Ironically the organization sponsoring the research could also be the "institutional review board" charged with protecting privacy. We will not be able to amend the bill to correct this inadequacy. This is only one problem still lurking in H.R. 5935. Under the guise of a public health investigation, a health and safety inquiry, or a law enforcement search, a Federal agent can still gain access to almost any medical record. The loophole in the Privacy Act has not been closed.

We can praise this bill for giving a patient access to his own records and for attempting to tighten some of the areas of potential records abuse, but in other respects the bill is more a "Federal Disclosure and Access to Medical Records Act" than it is a "Federal Privacy of Medical Information Act." The bill states that "a patient's right to privacy must be balanced against the legitimate needs of public and private organizations for individually identifiable medical information." This sentence crystallizes my objections to the bill. We have no authority to balance a constitutional right against a mere need, even if that need is dignified with the adjective "legitimate."

Justice William O. Douglas, concurring in the case of *Doe v. Bolton*, 410 U.S. 179, stated clearly:

The right to privacy has no more conspicuous place than in the physician-patient relationship. . . . The right to seek advice on one's health and the right to place reliance

on the physician of one's choice are basic to the 14th Amendment.

Moreover, the Bill of Rights was drafted to protect individuals against these very invasions of privacy. The first amendment recognizes a right to freely speak to one's doctor. The fourth amendment recognizes the right to be secure against searches and seizures of personal records. The fifth amendment recognizes that we need not testify against ourselves openly or via medical records. A constitutional right should not be blithely "balanced" against mere "needs" of the Government or private agencies.

While I have tried to stress the inviolability of these rights with my amendments in committee, many of them will not be in order today. We may wish to re-examine this legislation again when we have the time to consider the full ramifications of medical records privacy. ●

● Mr. WAXMAN. Mr. Speaker, I rise in strong support of H.R. 5935, the Federal Privacy of Medical Information Act, a bill to protect the privacy of medical information about patients of medical care facilities.

The bill has three major elements. It defines the rights of patients to inspect and seek correction of medical information about them that is maintained by medical care facilities. It defines the circumstances under which a medical care facility may disclose patient identifiable medical information to third parties, with or without the consent of the patient. Finally, the bill defines criminal penalties for obtaining patient medical records from medical care facilities under false or fraudulent pretenses or by theft.

Taken together, these elements represent a major step toward the creation of a legitimate, enforceable expectation of confidentiality of patient medical information.

Last June, the Subcommittee on Health and the Environment had the opportunity to review H.R. 5935 as reported by the Committee on Government Operations. I can assure my colleagues that the subcommittee went over the bill with a fine-tooth comb. The full committee followed suit later that same month. The bill now before you benefited greatly from that thorough review, and particularly from the contributions of the ranking minority member, Dr. TIM LEE CARTER, and the senior majority member, Mr. DAVID SATTERFIELD, who interest in this area is a longstanding one.

Let me summarize briefly some of the major improvements our subcommittee and full committee made in this bill.

We limited to 2 years the period for which a patient could give written authorization for the disclosure of his or her medical records to third parties. (An exception to this limitation was made to accommodate the needs of veterans' service organizations.) This change will eliminate perpetual consents, under which patients unwittingly give up all control over the use of their medical records.

We modified the requirement that medical care facilities allow inspection of medical information about a patient by that patient in order to permit fa-

December 1, 1980

CONGRESSIONAL RECORD—HOUSE

H 11375

United States which are to be used for general statistical purposes;

"(5) the term 'data element' means a distinct piece of information such as a name, term, number, abbreviation, or symbol;

"(6) the term 'data element dictionary' means a system containing standard and uniform definitions and cross references for commonly used data elements;

"(7) the term 'data profile' means a synopsis of the questions contained in an information collection request and the official name of the request, the location of information obtained or to be obtained through the request, a description of any compilations, analyses, or reports derived or to be derived from such information, any record retention requirements associated with the request, the agency responsible for the request, the statute authorizing the request, and any other information necessary to identify, obtain, or use the data contained in such information;

"(8) the term 'Director' means the Director of the Office of Management and Budget;

"(9) the term 'directory of information resources' means a catalog of information collection requests, containing a data profile for each request;

"(10) the term 'independent regulatory agency' means the Board of Governors of the Federal Reserve System, the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

"(11) the term 'information collection request' means a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirements, or other similar method calling for the collection of information;

"(12) the term 'information referral service' means the function that assists officials and persons in obtaining access to the Federal Information Locator System;

"(13) the term 'information systems' means management information systems;

"(14) the term 'person' means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

"(15) the term 'practical utility' means the ability of an agency to use information it collects, particularly the capability to process such information in a timely and useful fashion; and

"(16) the term 'recordkeeping requirement' means a requirement imposed by an agency on persons to maintain specified records.

"§ 3503. Office of Information and Regulatory Affairs

"(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

"(b) There shall be at the head of the Office an Administrator who shall be appointed by, and who shall report directly to, the Director. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except

that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information policy.

"§ 3504. Authority and functions of Director

"(a) The Director shall develop and implement Federal information policies, principles, standards, and guidelines and shall provide direction and oversee the review and approval of information collection requests, the reduction of the paperwork burden, Federal statistical activities, records management activities, privacy of records, interagency sharing of information, and acquisition and use of automatic data processing telecommunications, and other technology for managing information resources. The authority under this section shall be exercised consistent with applicable law.

"(b) The general information policy functions of the Director shall include—

"(1) developing and implementing uniform and consistent information resources management policies and overseeing the development of information management principles, standards, and guidelines and promoting their use;

"(2) initiating and reviewing proposals for changes in legislation, regulations, and agency procedures to improve information practices, and informing the President and the Congress on the progress made therein;

"(3) coordinating, through the review of budget proposals and as otherwise provided in this section, agency information practices;

"(4) promoting, through the use of the Federal Information Locator System, the review of budget proposals and other methods, greater sharing of information by agencies;

"(5) evaluating agency information management practices to determine their adequacy and efficiency, and to determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director; and

"(6) overseeing planning for, and conduct of research with respect to, Federal collection, processing, storage, transmission, and use of information.

"(c) The information collection request clearance and other paperwork control functions of the Director shall include—

"(1) reviewing and approving information collection requests proposed by agencies;

"(2) determining whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency;

"(3) ensuring that all information collection requests—

"(A) are inventoried, display a control number and, when appropriate, an expiration date;

"(B) indicate the request is in accordance with the clearance requirements of section 3507; and

"(C) contain a statement to inform the person receiving the request why the information is being collected, how it is to be used, and whether responses to the request are voluntary, required to obtain a benefit, or mandatory;

"(4) designating as appropriate, in accordance with section 3509, a collection agency to obtain information for two or more agencies;

"(5) setting goals for reduction of the burdens of Federal information collection requests;

"(6) overseeing action on the recommendations of the Commission on Federal Paperwork; and

"(7) designing and operating, in accordance with section 3511, the Federal Information Locator System.

"(d) The statistical policy and coordination functions of the Director shall include—

"(1) developing long range plans for the improved performance of Federal statistical activities and programs;

"(2) coordinating, through the review of

budget proposals and as otherwise provided in this section, the functions of the Federal Government with respect to gathering, interpreting, and disseminating statistics and statistical information;

"(3) developing and implementing Government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classifications, and statistical information presentation and dissemination; and

"(4) evaluating statistical program performance and agency compliance with Government-wide policies, principles, standards, and guidelines.

"(e) The records management functions of the Director shall include—

"(1) providing advice and assistance to the Administrator of General Services in order to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information policies, principles, standards, and guidelines established under this chapter;

"(2) reviewing compliance by agencies with the requirements of chapters 29, 31, and 33 of this title and with regulations promulgated by the Administrator of General Services thereunder; and

"(3) coordinating records management policies and programs with related information programs such as information collection, statistics, automatic data processing and telecommunications, and similar activities.

"(f) The privacy functions of the Director shall include—

"(1) developing and implementing policies, principles, standards, and guidelines on information disclosure and confidentiality, and on safeguarding the security of information collected or maintained by or on behalf of agencies;

"(2) providing agencies with advice and guidance about information security, restriction, exchange, and disclosure; and

"(3) monitoring compliance with section 552a of title 5, United States Code, and related information management laws.

"(g) The Federal automatic data processing and telecommunications functions of the Director shall include—

"(1) developing and implementing policies, principles, standards, and guidelines for automatic data processing and telecommunications functions and activities of the Federal Government, and overseeing the establishment of standards under section 111(f) of the Federal Property and Administrative Services Act of 1949;

"(2) monitoring the effectiveness of, and compliance with, directives issued pursuant to sections 110 and 111 of such Act of 1949 and reviewing proposed determinations under section 111(g) of such Act;

"(3) providing advice and guidance on the acquisition and use of automatic data processing and telecommunications equipment, and coordinating, through the review of budget proposals and other methods, agency proposals for acquisition and use of such equipment;

"(4) promoting the use of automatic data processing and telecommunications equipment by the Federal Government to improve the effectiveness of the use and dissemination of data in the operation of Federal programs; and

"(5) initiating and reviewing proposals for changes in legislation, regulations, and agency procedures to improve automatic data processing and telecommunications practices, and informing the President and the Congress on the progress made therein.

"(h) (1) As soon as practicable, but no later than publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information requirement and upon request, information necessary to make the determination required pursuant to this section.

H 11376

CONGRESSIONAL RECORD—HOUSE

December 1, 1980

"(2) Within sixty days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information requirement contained in the proposed rule.

"(3) When a final rule is published in the Federal Register, the agency shall explain how any collection of information requirement contained in the final rule responds to the comments, if any, filed by the Director or the public, or explain why it rejected those comments.

"(4) The Director has no authority to disapprove any collection of information requirement specifically contained in an agency rule, if he has received notice and failed to comment on the rule within sixty days of the notice of proposed rulemaking.

"(5) Nothing in this section prevents the Director, in his discretion—

"(A) from disapproving any information collection request which was not specifically required by an agency rule;

"(B) from disapproving any collection of information requirement contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection; or

"(C) from disapproving any collection of information requirement contained in a final agency rule, if the Director finds within sixty days of the publication of the final rule that the agency's response to his comments filed pursuant to paragraph (2) of this subsection was unreasonable.

"(D) from disapproving any collection of information requirement where the Director determines that the agency has substantially modified in the final rule the collection of information requirement contained in the proposed rule where the agency has not given the Director the information required in paragraph (1), with respect to the modified collection of information requirement, at least sixty days before the issuance of the final rule.

"(6) The Director shall make publicly available any decision to disapprove a collection of information requirement contained in an agency rule, together with the reasons for such decision.

"(7) The authority of the Director under this subsection is subject to the provisions of section 3507(c).

"(8) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

"(9) There shall be no judicial review of any kind of the Director's decision to approve or not to act upon a collection of information requirement contained in an agency rule.

"§ 3505. Assignment of tasks and deadlines
"In carrying out the functions under this chapter, the Director shall—

"(1) Upon enactment of this Act—

"(A) set a goal to reduce the then existing burden of Federal collections of information by 15 per centum by October 1, 1982; and

"(B) for the year following, set a goal to reduce the burden which existed upon enactment by an additional 10 per centum;

"(2) within one year after the effective date of this Act—

"(A) establish standards and requirements for agency audits of all major information systems and assign responsibility for conducting Government-wide or multiagency audits, except the Director shall not assign such responsibility for the audit of major information systems used for the conduct of criminal investigations or intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or for cryptologic activities

that are communications security activities;

"(B) establish the Federal Information Locator System;

"(C) identify areas of duplication in information collection requests and develop a schedule and methods for eliminating duplication;

"(D) develop a proposal to augment the Federal Information Locator System to include data profiles of major information holdings of agencies (used in the conduct of their operations) which are not otherwise required by this chapter to be included in the System; and

"(E) identify initiatives which may achieve a 10 per centum reduction in the burden of Federal collections of information associated with the administration of Federal grant programs; and

"(3) within two years after the effective date of this Act—

"(A) establish a schedule and a management control system to ensure that practices and programs of information handling disciplines, including records management, are appropriately integrated with the information policies mandated by this chapter;

"(B) identify initiatives to improve productivity in Federal operations using information processing technology;

"(C) develop a program to (i) enforce Federal information processing standards, particularly software language standards, at all Federal installations; and (ii) revitalize the standards development program established pursuant to section 759(f)(2) of title 40, United States Code, separating it from peripheral technical assistance functions and directing it to the most productive areas;

"(D) complete action on recommendations of the Commission on Federal Paperwork by implementing, implementing with modification or rejecting such recommendations including, where necessary, development of legislation to implement such recommendations;

"(E) develop, in consultation with the Administrator of General Services, a five-year plan for meeting the automatic data processing and telecommunications needs of the Federal Government in accordance with the requirements of section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) and the purposes of this chapter; and

"(F) submit to the President and the Congress legislative proposals to remove inconsistencies in laws and practices involving privacy, confidentiality, and disclosure of information.

"§ 3506. Federal agency responsibilities

"(a) Each agency shall be responsible for carrying out its information management activities in an efficient, effective, and economical manner, and for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

"(b) The head of each agency shall designate, within three months after the effective date of this Act, a senior official or, in the case of military departments, and the Office of the Secretary of Defense, officials who report directly to such agency head to carry out the responsibilities of the agency under this chapter. If more than one official is appointed for the military departments the respective duties of the officials shall be clearly delineated.

"(c) Each agency shall—

"(1) systematically inventory its major information systems and periodically review its information management activities, including planning, budgeting, organizing, directing, training, promoting, controlling, and other managerial activities involving the collection, use, and dissemination of information;

"(2) ensure its information systems do not overlap each other or duplicate the systems of other agencies;

"(3) develop procedures for assessing the paperwork and reporting burden of proposed legislation affecting such agency;

"(4) assign to the official designated under subsection (b) the responsibility for the conduct of and accountability for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759); and

"(5) ensure that information collection requests required by law or to obtain a benefit, and submitted to nine or fewer persons, contain a statement to inform the person receiving the request that the request is not subject to the requirements of section 3507 of this chapter.

"(d) The head of each agency shall establish such procedures as necessary to ensure the compliance of the agency with the requirements of the Federal Information Locator System, including necessary screening and compliance activities.

"§ 3507. Public information collection activities—submission to Director; approval and delegation

"(a) An agency shall not conduct or sponsor the collection of information unless, in advance of the adoption or revision of the request for collection of such information—

"(1) the agency has taken actions, including consultation with the Director, to—

"(A) eliminate, through the use of the Federal Information Locator System and other means, information collections which seek to obtain information available from another source within the Federal Government;

"(B) reduce to the extent practicable and appropriate the burden on persons who will provide information to the agency; and

"(C) formulate plans for tabulating the information in a manner which will enhance its usefulness to other agencies and to the public;

"(2) the agency (A) has submitted to the Director the proposed information collection request, copies of pertinent regulations and other related materials as the Director may specify, and an explanation of actions taken to carry out paragraph (1) of this subsection, and (B) has prepared a notice to be published in the Federal Register stating that the agency has made such submission; and

"(3) the Director has approved the proposed information collection request, or the period for review of information collection requests by the Director provided under subsection (b) has elapsed.

"(b) The Director shall, within sixty days of receipt of a proposed information collection request, notify the agency involved of the decision to approve or disapprove the request and shall make such decisions publicly available. If the Director determines that a request submitted for review cannot be reviewed within sixty days, the Director may, after notice to the agency involved, extend the review period for an additional thirty days. If the Director does not notify the agency of an extension, denial, or approval within sixty days (or, if the Director has extended the review period for an additional thirty days and does not notify the agency of a denial or approval within the time of the extension), a control number shall be assigned without further delay, the approval may be inferred, and the agency may collect the information for not more than one year.

"(c) Any disapproval by the Director, in whole or in part, of a proposed information collection request of an independent regulatory agency, or an exercise of authority under sections 3504(h) or 3509 concerning such an agency, may be voided, if the agency by a majority vote of its members overrides the Director's disapproval or exercise of authority. The agency shall certify each override to the Director, shall explain the reasons for exercising the override authority. Where

December 1, 1980

CONGRESSIONAL RECORD — HOUSE

H 11377

the override concerns an information collection request, the Director shall without further delay assign a control number to such request, and such override shall be valid for a period of three years.

"(d) The Director may not approve an information collection request for a period in excess of three years.

"(e) If the Director finds that a senior official of an agency designated pursuant to section 3506(b) is sufficiently independent of program responsibility to evaluate fairly whether proposed information collection requests should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed requests in specific program areas, for specific purposes, or for all agency purposes. A delegation by the Director under this section shall not preclude the Director from reviewing individual information collection requests if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

"(f) An agency shall not engage in a collection information without obtaining from the Director a control number to be displayed upon the information collection request.

"(g) If an agency head determines a collection of information (1) is needed prior to the expiration of the sixty-day period for the review of information collection requests established pursuant to subsection (b), (2) is essential to the mission of the agency, and (3) the agency cannot reasonably comply with the provisions of this chapter within such sixty-day period because (A) public harm will result if normal clearance procedures are followed, or (B) an unanticipated event has occurred and the use of normal clearance procedures will prevent or disrupt the collection of information related to the event or will cause a statutory deadline to be missed, the agency head may request the Director to authorize such collection of information prior to expiration of such sixty-day period. The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved shall assign the information collection request a control number. Any collection of information conducted pursuant to this subsection may be conducted without compliance with the provisions of this chapter for a maximum of ninety days after the date on which the Director received the request to authorize such collection.

"§ 3508. Determination of necessity for information; hearing

"Before approving a proposed information collection request, the Director shall determine whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary, for any reason, the agency may not engage in the collection of the information.

"§ 3509. Designation of central collection agency

"The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines

that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with any applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by it may not obtain for itself information which it is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority herein is subject to the provisions of section 3507(c) of this chapter.

"§ 3510. Cooperation of agencies in making information available

"(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained pursuant to an information collection request if the disclosure is not inconsistent with any applicable law.

"(b) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information. The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

"§ 3511. Establishment and operation of Federal Information Locator System

"(a) There is established in the Office of Information and Regulatory Affairs a Federal Information Locator System (hereafter in this section referred to as the 'System') which shall be composed of a directory of information resources, a data element dictionary, and an information referral service. The System shall serve as the authoritative register of all information collection requests.

"(b) In designing and operating the System, the Director shall—

"(1) design and operate an indexing system for the System;

"(2) require the head of each agency to prepare in a form specified by the Director, and to submit to the Director for inclusion in the System, a data profile for each information collection request of such agency;

"(3) compare data profiles for proposed information collection requests against existing profiles in the System, and make available the results of such comparison to—

"(A) agency officials who are planning new information collection activities; and

"(B) on request, members of the general public; and

"(4) ensure that no actual data, except descriptive data profiles necessary to identify duplicative data or to locate information, are contained within the System.

"§ 3512. Public protection

"Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter.

"§ 3513. Director review of agency activities; reporting; agency response

"(a) The Director shall, with the advice and assistance of the Administrator of Gen-

eral Services, selectively review, at least once every three years, the information management activities of each agency to ascertain their adequacy and efficiency. In evaluating the adequacy and efficiency of such activities, the Director shall pay particular attention to whether the agency has complied with section 3506.

"(b) The Director shall report the results of the reviews to the appropriate agency head, the House Committee on Government Operations, the Senate Committee on Governmental Affairs, the House and Senate Committees on Appropriations, and the committees of the Congress having jurisdiction over legislation relating to the operations of the agency involved.

"(c) Each agency which receives a report pursuant to subsection (b) shall, within sixty days after receipt of such report, prepare and transmit to the Director, the House Committee on Government Operations, the Senate Committee on Governmental Affairs, the House and Senate Committees on Appropriations, and the committees of the Congress having jurisdiction over legislation relating to the operations of the agency, a written statement responding to the Director's report, including a description of any measures taken to alleviate or remove any problems or deficiencies identified in such report.

§ 3514. Responsiveness to Congress

"(a) The Director shall keep the Congress and its committees fully and currently informed of the major activities under this chapter, and shall submit a report thereon to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary. The Director shall include in any such report—

"(1) proposals for legislative action needed to improve Federal information management, including, with respect to information collection, recommendations to reduce the burden on individuals, small businesses, State and local governments, and other persons;

"(2) a compilation of legislative impediments to the collection of information which the Director concludes that an agency needs but does not have authority to collect;

"(3) an analysis by agency, and by categories the Director finds useful and practicable, describing the estimated reporting hours required of persons by information collection requests, including to the extent practicable the direct budgetary costs of the agencies and identification of statutes and regulations which impose the greatest number of reporting hours;

"(4) a summary of accomplishments and planned initiatives to reduce burdens of Federal information collection requests;

"(5) a tabulation of areas of duplication in agency information collection requests identified during the preceding year and efforts made to preclude the collection of duplicate information, including designations of central collection agencies;

"(6) a list of each instance in which an agency engaged in the collection of information under the authority of section 3507(g) and an identification of each agency involved;

"(7) a list of all violations of provisions of this chapter and rules, regulations, guidelines, policies, and procedures issued pursuant to this chapter; and

"(8) with respect to recommendations of the Commission on Federal Paperwork—

"(A) a description of the specific actions taken on or planned for each recommendation;

"(B) a target date for implementing each recommendation accepted but not implemented; and

"(C) an explanation of the reasons for any delay in completing action on such recommendations.

"(b) The preparation of any report required by this section shall not increase the

H 11378

CONGRESSIONAL RECORD—HOUSE

December 1, 1980

collection of information burden on persons outside the Federal Government.

§ 3515. Administrative powers

"Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

§ 3516. Rules and regulations

"The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

§ 3517. Consultation with other agencies and the public

"In the development of information policies, plans, rules, regulations, procedures, and guidelines and in reviewing information collection requests, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

§ 3518. Effect on existing laws and regulations

"(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information activities is subject to the authority conferred on the Director by this chapter.

"(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

"(c) (1) Except as provided in paragraph (2), this chapter does not apply to the collection of information—

"(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

"(B) during the conduct of (i) a civil action to which the United States or any official or agency thereof is a party or (ii) an administrative action or investigation involving an agency against specific individuals or entities;

"(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

"(D) during the conduct of intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

"(2) This chapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

"(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

"(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

§ 3519. Access to information

"Under the conditions and procedures prescribed in section 313 of the Budget and Accounting Act of 1921, as amended, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records of the Office.

§ 3520. Authorization of appropriations

"There are hereby authorized to be appropriated to carry out the provisions of this chapter, and for no other purpose, sums—

"(1) not to exceed \$8,000,000 for the fiscal year ending September 30, 1981;

"(2) not to exceed \$8,500,000 for the fiscal year ending September 30, 1982; and

"(3) not to exceed \$9,000,000 for the fiscal year ending September 30, 1983."

"(b) The item relating to chapter 35 in the table of chapters for such title is amended to read as follows:

"35. Coordination of Federal Information Policy."

"(c) (1) Section 2904(10) of such title is amended to read as follows:

"(10) report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget annually and at such other times as the Administrator deems desirable (A) on the results of activities conducted pursuant to paragraphs (1) through (9) of this section, (B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (8) and (9) of this section, and (C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations."

"(2) Section 2905 of such title is amended by redesignating the text thereof as subsection (a) and by adding at the end of such section the following new subsection:

"(b) The Administrator of General Services shall assist the Administrator for the Office of Information and Regulatory Affairs in conducting studies and developing standards relating to record retention requirements imposed on the public and on State and local governments by Federal agencies."

Sec. 3. (a) The President and the Director of the Office of Management and Budget shall delegate to the Administrator for the Office of Information and Regulatory Affairs all functions, authority, and responsibility under section 103 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 18b).

"(b) The Director of the Office of Management and Budget shall delegate to the Administrator for the Office of Information and Regulatory Affairs all functions, authority, and responsibility of the Director under section 552a of title 5, United States Code, under Executive Order 12046 and Reorganization Plan No. 1 for telecommunications, and under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759).

Sec. 4. (a) Section 400A of the General Education Provisions Act is amended by (1) striking out "and" after "institutions" in subsection (a) (1) (A) and inserting in lieu thereof "or", and (2) by amending subsection (a) (3) (B) to read as follows:

"(B) No collection of information or data acquisition activity subject to such procedures shall be subject to any other review, coordination, or approval procedure outside of the relevant Federal agency, except as required by this subsection and by the Director of the Office of Management and Budget under the rules and regulations

established pursuant to chapter 35 of title 44, United States Code. If a requirement for information is submitted pursuant to this Act for review, the timetable for the Director's approval established in section 3507 of the Paperwork Reduction Act of 1980 shall commence on the date the request is submitted, and no independent submission to the Director shall be required under such Act."

"(b) Section 201(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1211) is repealed.

"(c) Section 708(f) of the Public Health Service Act (42 U.S.C. 292h(f)) is repealed.

"(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget."

Sec. 5. This Act shall take effect on April 1, 1981.

Amend the title so as to read: "An Act to reduce paperwork and enhance the economy and efficiency of the Government and the private sector by improving Federal information policymaking, and for other purposes."

The SPEAKER pro tempore. Is a second demanded?

Mrs. SNOWE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas (Mr. Brooks) will be recognized for 20 minutes, and the gentlewoman from Maine (Mrs. Snowe) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. Brooks).

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, H.R. 6410 is the result of a growing awareness that the Federal Government needs to improve the management and use of its information resources. Serious deficiencies exist in present agency management of these resources and, if allowed to continue, will drastically reduce the effectiveness of Government while, at the same time, impose an increasing burden on the public.

The basic premise of this legislation is that information is a valuable resource and should be effectively managed like other resources. Based on this premise, the bill provides clear statutory authority to reduce the paperwork burdens generated by the Government and to consolidate the currently fragmented information policy responsibilities into a strong central management office in OMB. The consolidation of responsibilities will enable the OMB Director to provide needed leadership and direction for the Government's information activities. Successful implementation of this legislation will result in: First, substantially reduced costs and burdens to both the Government and the public; and second, enhanced Government efficiency and effectiveness.

H.R. 6410 passed the House on March 24 of this year by a vote of 328 to 13. The Senate amended and unani-

December 1, 1980

CONGRESSIONAL RECORD — HOUSE

H 11379

ously passed the House bill on November 19.

The Senate version of the bill differs from the House-passed version in three respects:

First. The Senate amendment requires OMB to expedite the clearance of agency information collection requests when specific emergency conditions exist;

Second. It insures that OMB's review of agency information collection requests will be coordinated with agency rule-making procedures established by the Administrative Procedure Act or other similar legislation; and

Third. The amendment provides specific exemptions from the bill for certain intelligence, defense, and investigatory activities. Existing statutes covering these activities are not affected by this amendment.

I believe these amendments are in keeping with the objectives of the bill. There are several issues which have been raised by opponents of this legislation, principally the Air Force, which should be discussed.

First, concerns have been expressed that H.R. 6410 would amplify failures of the existing ADP acquisition process by further complicating the acquisition process and expanding the roles of OMB and GSA.

The opponents offer no explanation of their concern that the acquisition process will become more complicated as a result of H.R. 6410. In fact, H.R. 6410 creates an environment necessary for simplifying the acquisition process. Lines of responsibility within each agency for information systems planning, management, and acquisition will be clearly drawn when H.R. 6410 is implemented. Today these responsibilities are fragmented and uncoordinated—facts recognized by the Congress and by the President's ADP Reorganization Project.

Nonetheless, there remains a concern that H.R. 6410 would expand the scope of the Brooks—Public Law 306—and the roles of GSA and OMB and that such expansion, if it were implemented, would be undesirable. This concern seems to fall in four areas:

TELECOMMUNICATIONS EQUIPMENT

Assertions have been made that the bill amends the Brooks Act to bring telecommunications equipment under the ADP acquisition process. This is not true. GSA and OMB have broad Government-wide responsibilities for telecommunications equipment and services established under existing laws and executive orders.

These authorities are independent of the Brooks Act. H.R. 6410 does not add to GSA/OMB authority nor does it define telecommunications as subject to ADP procurement procedures. The bill acknowledges that ADP and telecommunications are intricately related and are significant tools to be used by each agency. As such, these items are of sufficient Government-wide importance to warrant long-range planning, OMB attention, and congressional review.

OPEN ENDED MEANING OF ADP

The opponents particularly dwell on the issue of "embedded" computers and makes note of some perceived GSA effort

last December to apply Brooks Act procedures to "guided missiles, weapons fire control equipment, space vehicles, microcircuits, and miniprocessors." This appears to be related to an episode of misunderstanding by DOD of communications from GSA regarding the applicability of ADP procurement procedures. By law, GSA's ADP procedures are applied to commercially available general purpose computers. Defense or other systems which only incidentally contain data processing components are acquired under other appropriate procurement procedures.

This is consistent with interpretations of the Brooks' Act by the Department of Justice and GAO. The Federal procurement regulations are soon to be reissued with this important point clarified. These revisions have been coordinated with DOD and all other Federal agencies.

ADDITIONAL GSA PLANNING

H.R. 6410 requires every agency to develop a 5-year plan for meeting their information technology resource requirements. GAO has repeatedly reported that the agencies have failed miserably in such planning activities. H.R. 6410 further requires that OMB, with the advice and assistance of GSA, develop a Government-wide plan that will assure that the most recent technologies are known and are made available to meet the agencies' requirements. Periodic reviews should be conducted in order to report to Congress the progress being made toward the objectives of the legislation.

The opponents fear that GSA would expand its role into definitions of mission agency ADP requirements. GSA is clearly prohibited from such incursions by existing statutes and the proposed legislation.

OMB ADMINISTRATION OF THE BROOKS ACT

The opponents also assert that OMB has not demonstrated competence in administering its current oversight and management responsibilities under the Brooks Act. This observation has been made on many occasions by the House Committee on Government Operations. The OMB failing has been its passive acceptance of its Brooks Act role and its reluctance to provide leadership and direction. An active advocacy and oversight role for OMB is needed and is required by the proposed legislation. The opponents see H.R. 6410 as singling out ADP procurement for micromanagement by OMB where in fact the proposed legislation and thrust of governmental improvement are far broader, much more necessary, and long overdue.

POTENTIAL EXEMPTION FROM MANAGEMENT AND OVERSIGHT

The second broad area I would like to address is the assertion that DOD should be totally exempt from the management and oversight principles established by the legislation. The justification for such an exemption appears to be twofold. First, there is a claim that ADP and telecommunications should not be included in a "paperwork reduction bill." Second is the claim that strengthening oversight of DOD's ADP and telecommunications activities will weaken our national defense.

Turning to the first argument, I believe it is necessary for the Congress and the public to understand that there is an inextricable interrelationship between information technology, paperwork, and redtape.

The demand for governmental services has resulted in the creation of increasing numbers of complex Federal programs. This growth, coupled with the availability and application of modern technology, has fostered an almost addictive demand for more and more information. At the present, there are virtually no managerial and budgetary controls on this demand. The Government has treated information as a free good without regard to: First, the hidden costs to the public to provide information; and second, the costs to the Government to collect, use, and disseminate information.

Even more importantly, the Government's ability to manage information has not improved sufficiently to handle this information explosion. In fact, the Government's traditional information systems are breaking down under the burden. Instead of providing timely and accurate information to manage Government programs and services, these systems more often than not stifle communications between the Government and the people, mislead the Government decisionmakers, clog information channels, and suffocate Government officials under mounds of computer printouts.

Unless something is done to correct this waste and inefficiency, the Government will fall increasingly behind in meeting its responsibilities to the American taxpayer. It was this finding that drove the Paperwork Commission to recommend the consolidation of all information policysetting activities, including ADP and telecommunications, into a central management office. The Commission believed strong central leadership was essential to bring about the basic fundamental changes that need to take place in the Government's management of its information resources.

As for the claim that increased oversight will somehow harm our national defense effort, there is no evidence which has been presented that supports this assertion.

The examples raised by the opponents are based on highly selective and misleading data. The claims that GSA has repeatedly interfered with DOD determinations of need for ADP equipment refers to efforts to stop sole-sourcing of "favored" vendors by military components. The claim that a significant portion of the lengthy acquisition time for complex ADP systems is attributable to delays caused by the procedures imposed by the Brooks Act runs counter to recent GAO studies that show the military departments responsible for most of the delay. Close examination of the other cases show no support for the conclusions drawn from them. Each case illustrates poor planning and poor judgment by military management and not undue interference or delay by GSA, OMB, or Congress.

I am happy to see that the Senate amendment supports the concept of

H 11380

CONGRESSIONAL RECORD—HOUSE

December 1, 1980

strong central management over the Government's information activities. I urge the House to accept the Senate-passed bill.

Mr. HORTON. Mr. Speaker, I rise in support of H.R. 6410, the Paperwork Reduction Act of 1980.

This bill, of which I am the principal cosponsor, has an extremely meritorious purpose: It creates a structure within the Federal Government for the better management of Federal information resources. Under the bill, the Office of Management and Budget is to set Government-wide information policy, and each agency, through its single information resources manager, is to implement that policy. As an aspect of better management, and a specific way in which the Federal paperwork burden can be reduced, OMB is granted the power to approve or reject any request which any agency proposes to make for the collection of information from 10 or more persons.

The version of the bill now before us—the version which was passed by the other body—is similar to the one which passed the House by a vote of 328 to 13 last March. The most significant difference between the two measures is the inclusion of a new subsection 3504(h) in the Senate version. The Senate provision is innovative in that it attempts to link the regulation-writing process with the collection of information by the Federal Government. The provision does this by mandating that OMB review and comment on each proposed regulation which contains a requirement for the collection of information.

Because subsection 3504(h) which the Senate has added to the bill is extremely complex, I think it is essential to clarify three points about it:

First, OMB's authority to review and comment on portions of proposed regulations which require the collection of information is supplemental to that agency's authority to approve or reject specific information collection requests. No matter what its action may have been with regard to a proposed regulation, OMB may freely approve or reject any specific collection request deriving from such a regulation.

Second, in reviewing proposed regulations, OMB may disapprove any collection requirement which it finds "unreasonable"—which is to say, not of sound judgment in the opinion of the OMB Director. The purpose of 3504(h) (5) (C) is not to restrict unduly the ability of OMB to act, but to insure that in acting, OMB have justification for what it does.

Third, decisions by OMB under this provision are not reviewable in court. Section 3504(h) (9) states that there shall be no judicial review of any OMB decision to approve or not act upon a proposed regulation; because the power to approve implies the power to disapprove, this paragraph in effect forbids court challenge of any decision to pursue any of the options open to OMB—approval, disapproval, or inaction.

Mr. Speaker, this measure has been through many forms and many deliberations since its essence was recommended by the Commission on Federal Paper-

work 3 years ago. I would be very pleased to have all my colleagues assist it over its final legislative hurdle today, and I look forward to important managerial improvements in the Federal Government as it becomes law.

Mrs. SNOWE. Mr. Speaker, I have no requests for time and yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. Brooks) that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 6410.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments to the bill, H.R. 6410, were concurred in.

A motion to reconsider was laid on the table.

RED RIVER COMPACT

Mr. DANIELSON. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 7206, to grant the consent of the United States to the Red River Compact among the States of Arkansas, Louisiana, Oklahoma, and Texas, as amended.

The Clerk read as follows:

H.R. 7206

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The consent of Congress is hereby given to the Red River Compact among the States of Arkansas, Louisiana, Oklahoma, and Texas, of May 12, 1978, as ratified by the States of Arkansas, Louisiana, Oklahoma, and Texas, as follows:

PREAMBLE

The States of Arkansas, Louisiana, Oklahoma, and Texas, pursuant to the acts of their respective Governors or legislatures, or both, being moved by considerations of interstate comity, have resolved to compact with respect to the water of the Red River and its tributaries. By Act of Congress, Public Law No. 348 (84th Congress, First Session), the consent of the United States has been granted for said States to negotiate and enter into a compact providing for an equitable apportionment of such water; and pursuant to that Act the President has designated the representative of the United States.

Further, the consent of Congress has been given for two or more States to negotiate and enter into agreements relating to water pollution control by the provisions of the Federal Water Pollution Control Act (Public Law 92-500, 33 U.S.C. 125 et seq.).

The Signatory States acting through their duly authorized Compact Commissioners, after several years of negotiations, have agreed to an equitable apportionment of the water of the Red River and its tributaries and do hereby submit and recommend that this compact be adopted by the respective legislatures and approved by Congress as hereinafter set forth:

ARTICLE I

PURPOSES

SECTION 1.01. The principal purposes of this Compact are:

(a) To promote interstate comity and remove causes of controversy between each of the affected states by governing the use, control and distribution of the interstate water of the Red River and its tributaries;

(b) To provide an equitable apportionment among the Signatory States of the water of the Red River and its tributaries;

(c) To promote an active program for the control and alleviation of natural deterioration and pollution of the water of the Red River Basin and to provide for enforcement of laws related thereto;

(d) To provide the means for an active program for the conservation of water, protection of lives and property from floods, improvement of water quality, development of navigation and regulation of flows in the Red River Basin; and

(e) To provide a basis for state or joint state planning and action by ascertaining and identifying each state's share in the interstate water of the Red River Basin and the apportionment thereof.

ARTICLE II

GENERAL PROVISIONS

SECTION 2.01. Each Signatory State may use the water allocated to it by the Compact in any manner deemed beneficial by that state. Each state may freely administer water rights and uses in accordance with the laws of that state, but such uses shall be subject to the availability of water in accordance with the apportionments made by this Compact.

SECTION 2.02. The use of water by the United States in connection with any Federal project shall be in accordance with the Act of Congress authorizing the project and the water shall be charged to the state or states receiving the benefit therefrom.

SECTION 2.03. Any Signatory State using the channel of Red River or its tributaries to convey stored water shall be subject to an appropriate reduction in the amount which may be withdrawn at the point of removal to account for transmission losses.

SECTION 2.04. The failure of any state to use any portion of the water allocated to it shall not constitute relinquishment or forfeiture of the right to such use.

SECTION 2.05. Each Signatory State shall have the right to:

(a) Construct conservation storage capacity for the impoundment of water allocated by this Compact;

(b) Replace within the same area any storage capacity recognized or authorized by this Compact made unusable by any cause, including losses due to sediment storage;

(c) Construct reservoir storage capacity for the purposes of flood and sediment control as well as storage of water which is either imported or is to be exported if such storage does not adversely affect the delivery of water apportioned to any other Signatory State; and

(d) Use the bed and banks of the Red River and its tributaries to convey stored water, imported or exported water, and water apportioned according to this Compact.

SECTION 2.06. Signatory States may cooperate to obtain construction of facilities of joint benefits to such states.

SECTION 2.07. Nothing in this Compact shall be deemed to impair or affect the powers, rights, or obligations of the United States, or those claiming under its authority, in, over and to water of the Red River Basin.

SECTION 2.08. Nothing in this Compact shall be construed to include within the water apportioned by this Compact any water consumed in each state by livestock or for domestic purposes; provided, however, the storage of such water is in accordance with the laws of the respective states but any such impoundment shall not exceed 200 acre-feet, or such smaller quantity as may be provided for the laws of each state.

SECTION 2.09. In the event any state shall import water into the Red River Basin from any other river basin, the Signatory State making the importation shall have the use of such imported water.